IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Mutual Bank, Plaintiff, v.))) Case No. 11-cv-7590)) JURY DEMANDED
AMRISH MAHAJAN, ARUN VELUCHAMY, ANU VELUCHAMY, STEVEN LAKNER, RONALD TUCEK, PATRICK MCCARTHY, PAUL PAPPAGEORGE, RICHARD BARTH, THOMAS PACOCHA, JAMES REGAS, and REGAS, FREZADOS & DALLAS LLP, Defendants.	Judge Virginia Kendall Judge Virginia Kendall Judge Virginia Kendall Judge Virginia Kendall

DEFENDANT THOMAS PACOCHA'S MOTION TO DISMISS

Defendant Thomas Pacocha ("Mr. Pacocha"), by and through his attorneys and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully moves to dismiss the Complaint filed by Plaintiff Federal Deposit Insurance Corporation ("FDIC") for failure to state any claim against Mr. Pacocha on which relief may be granted. In support of his motion, Mr. Pacocha states as follows:

- 1. On October 25, 2011, the FDIC filed a Complaint against Mr. Pacocha and other defendants for various allegedly wrongful actions they engaged in that purportedly led to losses and the closing of Mutual Bank.
- 2. For these actions, the FDIC alleges that Mr. Pacocha was negligent, grossly negligent, and breached his fiduciary duty to Mutual Bank.

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3. The FDIC, however, fails to allege sufficient facts supporting any of its legal

claims against Mr. Pacocha. Further, the claims are not plead sufficiently to overcome the

business judgment rule.

4. Lastly, the FDIC's negligence and breach of fiduciary duty claims are duplicative.

5. As such, the FDIC's Complaint should be dismissed pursuant to Fed. R. Civ. P.

12(b)(6), because it fails to state a claim upon which relief can be granted.

6. In further support of his Rule 12(b)(6) basis for dismissal, Mr. Pacocha has filed

concurrently with this Motion his Memorandum of Law in Support thereof.

WHEREFORE, Defendant Thomas Pacocha respectfully requests that this Court dismiss

the FDIC's Complaint in its entirety and with prejudice, and grant Mr. Pacocha such further and

additional relief as this Court deems just and proper.

Dated: January 18, 2012

Respectfully submitted,

/s/ Steven M. Malina

One of the Attorneys for

Defendant Thomas Pacocha

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